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3 BILL NO. G-76-02-38

4 GENERAL ORDINANCE G- 06-76

5 AN ORDINANCE PERMITTING THE USE OF EXISTING  
6 STOCKS OF FORMS OF COMPLAINT, NOTICES OF  
7 VIOLATION AND OTHER CITATIONS AND FORMS IN  
8 THE ENFORCEMENT OF LAWS AND ORDINANCES  
9 OF THE CITY OF FORT WAYNE.

10 WHEREAS, the Code Of The City of Fort Wayne, Indiana  
of 1974 became effective on February 20, 1976; and

11 WHEREAS, certain departments and offices of the City  
12 of Fort Wayne, Indiana utilize the services of the Office  
of the City Clerk to aid in the enforcement of the laws  
13 and ordinances of the City of Fort Wayne delegated to  
said departments and offices for enforcement; and

14 WHEREAS, there has been created in the Office of  
the City Clerk of Fort Wayne, Indiana a Traffic Violations  
15 Bureau, which Traffic Violations Bureau handles the  
processing of not only parking violations but also vio-  
16 lations of many of the laws and ordinances of the City  
of Fort Wayne, Allen County, Indiana; and

17 WHEREAS, various agencies and departments of the  
18 City of Fort Wayne, Indiana have adopted and are using  
notices of violations and complaints against violators  
19 of the laws and ordinances of the City of Fort Wayne,  
Indiana, which laws make reference to previously enacted  
20 and codified ordinances and laws and refer in many in-  
stances to reference, chapter, section, and page of  
The Municipal Code of the City of Fort Wayne, Indiana  
21 1946, 1959 edition and there are still in print and in use  
said tickets, complaints and notices of violation, but  
22 in all instances the language of the designation of the  
offenses as recited therein is the same as now enacted in  
23 The Code of the City of Fort Wayne of 1974; and

24 WHEREAS, it would be wasteful to require destruction  
25 of said forms.

26 NOW THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL  
OF THE CITY OF FORT WAYNE, INDIANA:

27 SECTION 1. That the existing forms of complaints,  
28 notices of violation and other citations and forms used in  
the enforcement of the laws and ordinances of the City  
29 of Fort Wayne, Indiana shall be permitted to be used and  
the fact that the section and all page numbers referred  
30 to in said existing forms of violation does not corres-  
pond with the new sections and page numbers in The Code  
31 of the City of Fort Wayne, Indiana of 1974, ~~none the less~~  
~~they shall include and encompass such existing sections~~  
~~in the Code of the City of Fort Wayne, Indiana of 1974.~~  
32 shall be no defense against the violation of the laws  
and ordinances therein complaint of as being violated.

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34 SECTION 2. Existing stocks of forms of complaints,  
35 notices of violation and other citations and forms used  
in the enforcement of laws and ordinances of the City of  
Fort Wayne, Indiana shall be permitted to be used until  
said supply is exhausted but not beyond 90 days from date  
of enactment of this ordinance.

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3 SECTION 3. This Ordinance shall be in full force  
4 and effect from and after its passage, signature and ap-  
5 proval by the Mayor.

6 William T. Long  
7 Councilman  
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31 Approved as to form and legality  
32 this 24 day of February, 1976.

33 John H. Logan  
34 John H. Logan, Attorney for Common  
35 Council of the City of Fort Wayne, In.

Read the first time in full and on motion by \_\_\_\_\_, seconded by \_\_\_\_\_, and duly adopted; read the second time by title and referred to the Committee on \_\_\_\_\_ (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Council Chambers, City-County Building, Fort Wayne, Indiana, on \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_, 197\_\_\_\_, at \_\_\_\_\_ o'clock P.M., E.S.T.

Date: 2-24-1976

Charles W. Holtermann  
CITY CLERK

Read the third time in full and on motion by Thayer, seconded by D. Schmidt, and duly adopted, placed on its passage.  
Passed (~~LOST~~) by the following vote:

	AYES	NAYS	ABSTAINED	ABSENT	TO-VIT
TOTAL VOTES	<u>9</u>	<u>0</u>			
BURNS	<u>✓</u>				
HINGA	<u>✓</u>				
HUNTER	<u>✓</u>				
MOSES	<u>✓</u>				
NUCKOLS	<u>✓</u>				
SCHMIDT, D.	<u>✓</u>				
SCHMIDT, V.	<u>✓</u>				
STIER	<u>✓</u>				
TALARICO	<u>✓</u>				

DATE: 2-24-76

Charles W. Holtermann  
CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (~~Zoning Map~~) (General) (Annexation) (~~Special~~) (~~Appropriation~~) Ordinance (Resolution) No. B-06-76 on the 24th day of February, 1976.

ATTEST:

(SEAL)

Charles W. Holtermann  
CITY CLERK

James S. Stites  
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 25<sup>th</sup> day of February, 1976, at the hour of 10: o'clock A.M. M., E.S.T.

Charles W. Holtermann  
CITY CLERK

Approved and signed by me this X day of X, 197\_\_\_\_, at the hour of \_\_\_\_\_ o'clock \_\_\_\_\_ M., E.S.T.

Robert V. Stock by Mayor as declared by the  
clerk - March 5, 1976 - Friday.  
MAYOR

SUSPENSION OF RULES

BILL NO. G-76-02-38

Councilman Hinga, moved to suspend the rules on passage of BILL NO. G-76-02-38, at this meeting of February 24, 1976, of the Common Council of the City of Fort Wayne, Indiana. Said motion was seconded by Councilman V. Schmidt, and duly passed by unanimous vote of all legally elected members of the said Common Council.

The above BILL and Ordinance ORDINANCE was accordingly placed on its passage.

DATE: 2-24-76

Charles W. Winterman  
CITY CLERK

\_\_\_\_\_  
PRESIDING OFFICER

	AYES	NAYS	ABSTAINED	ABSENT	TO-WIT
	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<u>BURNS</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<u>HINGA</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<u>HUNTER</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<u>MOSES</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<u>NUCKOLS</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<u>D. SCHMIDT</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<u>V. SCHMIDT</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<u>STIER</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<u>TALARICO</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as General Ordinance No G-06-76

ATTEST:

(SEAL)

DATE: \_\_\_\_\_

Charles W. Winterman  
CITY CLERK

Read the first time in full and on motion by \_\_\_\_\_, seconded by \_\_\_\_\_, and duly adopted; read the second time by title and referred to the Committee on \_\_\_\_\_ (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Council Chambers, City-County Building, Fort Wayne, Indiana, on \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_, 197\_\_\_\_, at \_\_\_\_\_ o'clock P.M., E.S.T.

Date: \_\_\_\_\_ CITY CLERK

Read the third time in full and on motion by Tolson, seconded by King, and duly adopted, placed on its passage. Passed (~~lost~~) by the following vote: (My vote is needed to override the tie)

	AYES	NAYS	ABSTAINED	ABSENT	TO-WIT
<u>TOTAL VOTES</u>	<u>8</u>	<u>1</u>			
<u>BURNS</u>	<u>X</u>				
<u>HINGA</u>	<u>X</u>				
<u>HUNTER</u>	<u>X</u>				
<u>MOSES</u>	<u>X</u>				
<u>NUCKOLS</u>	<u>X</u>				
<u>SCHMIDT, D.</u>		<u>X</u>			
<u>SCHMIDT, V.</u>	<u>X</u>				
<u>STIER</u>	<u>X</u>				
<u>TALARICO</u>	<u>X</u>				

DATE: 3-9-76 \_\_\_\_\_ CITY CLERK


Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (Zoning Map) (General) (Annexation) (Special) (Appropriation) Ordinance (Resolution) No. B-46-76 on the 9th day of March, 1976.

ATTEST: \_\_\_\_\_ (SEAL) \_\_\_\_\_  
CITY CLERK PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the \_\_\_\_\_ day of \_\_\_\_\_, 197\_\_\_\_, at the hour of \_\_\_\_\_ o'clock \_\_\_\_\_ M., E.S.T.

Approved and signed by me this \_\_\_\_\_ day of \_\_\_\_\_, 197\_\_\_\_, at the hour of \_\_\_\_\_ o'clock \_\_\_\_\_ M., E.S.T.

\_\_\_\_\_  
MAYOR



Pursuant to law I, Charles W. Westerman, City Clerk of Fort Wayne and Clerk of the Common Council, on this date March 9, 1976, presented to the members of the Common Council Bills No. G-76-02-38 and S-76-02-18 pocket vetoed by Robert E. Armstrong, Mayor of the City of Fort Wayne, for deliberation and action pursuant to the law by this legislative body.

Charles W. Westerman  
City Clerk

MESSAGE FROM THE MAYOR TO COMMON COUNCIL

In Re: G-76-02-38

This ordinance was not approved as to legality prior to its passage by the City Attorney.

The powers and duties of the City Attorney are explicitly set forth in Indiana Code (1971) Section 18-1-6-13.

"The head of the department of law in every city shall be the attorney and counsel of such city. ...He shall have the management, charge and control (emphasis added) of the law business of such city and for each branch of its government, shall prosecute all violators of city ordinances, shall be the legal advisor of all its departments and officers, shall draw up ordinances, leases, deeds, contracts, or other legal papers for such city and its various departments, when requested to do so by the proper officer,..."

The Common Council is a "branch of its government", the City Attorney has full powers to determine the law business of the Common Council. This control is not modified by Indiana Code (1971) Section 18-2-3.5-1 which sets forth the ability of the Common Council to hire legal assistance. The statute sets forth,

"The Common Council of any city is hereby empowered to hire or contract with,...one or more competent attorneys...

- (b) The appointment of an attorney pursuant to this section shall in no way eliminate the office or duties of City Attorney as may now or hereafter be provided for by any law of this State."

It would seem to be apparent from a common sensical interpretation of these two statutes that the City Attorney need not originate all of the ordinances passed by the City but that he should have some modicum of control of the source of such ordinances and final approval of content before consideration of passage.

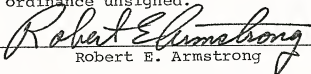
Bill G-76-02-38, passed by the Common Council on February 25, 1976, allows the use of existing forms of complaints, notices of violation and other citations of the laws and ordinances of the City of Fort Wayne. The Common Council believes that it has the power to authorize ordinances which allow actions to recover penalties for violation of city ordinances that are civil in nature, although these said existing forms do not state the content of the ordinance nor do they state the proper section and page numbers of the Code of the City of Fort Wayne.

The Supreme Court of Indiana has held that actions to recover penalties for violation of city ordinances are civil in nature. The general rules of pleading, as governed by the Indiana Rules of Trial Procedure, require at least a short and plain statement of the claim showing that the pleader is entitled to relief.

Any action not satisfying this rule is subject to dismissal. Recovery of a penalty under such forms of complaints, notices of violation and other citations in forms may possibly violate the Constitution of the State of Indiana, Article I, Section 12, which states:

"COURTS OPENED - DUE COURSE OF LAW - ADMINISTRATION OF JUSTICE - All courts shall be open; and every man, for injury done to him and his person, property or reputation, shall have remedy by due course of law. Justice shall be administered freely, and without purchase; completely, and without denial; speedily and without delay."

It is, therefore, doubtful that this ordinance is constitutional; therefore, I return the ordinance unsigned.

  
Robert E. Armstrong